



# Public Notice

Date:

Published: Feb. 12, 2001

Expires: Mar. 14, 2001

**U.S. Army Corps  
of Engineers**

**In Reply Refer To:**

**Buffalo District CELRB-CO-R RE: 2001-00136(0) Section: OH 10 and 404**

**Announcement of a Proposed New Regional Permit under Authority of  
Section 10 of the Rivers and Harbors Act of 1899 and  
Section 404 of the Clean Water Act (33 U.S.C. 1344).**

The District Commander, U.S. Army Engineer District, Buffalo, New York, is considering on behalf of the general public issuance of General Permit No. 2001-00136 to authorize relocation and maintenance of linear transportation ditches that are jurisdictional waters of the United States in the State of Ohio and subject to regulation by the U.S. Army Engineer District, Buffalo. This action is being taken in accordance with Title 33 of the Code of Federal Regulations (33 CFR) Parts 320 through 330, as published in the November 13, 1986 Federal Register, Volume 51, No. 219. Use of this General Permit will require an individual permittee to notify the District Commander of their proposed activities. Work on the project may not proceed until written confirmation is received regarding the applicability of the General Permit to the specific project. If the permit is issued, the attached terms and conditions of the authorization will apply.

This Public Notice also serves as a request to the Ohio Environmental Protection Agency (OEPA) for Section 401 Water Quality Certification and to the Ohio Department of Natural Resources for agreement with the Buffalo District's determination that this proposed General Permit is consistent with their Coastal Zone Management Plan. By Federal law no Department of the Army permit can be issued until a Section 401 Water Quality Certification (WQC), or waiver thereof, has been issued by the OEPA, and a Coastal Zone Management (CZM) Federal consistency determination has been issued.

Location and details of the proposed Regional Permit are attached.

Questions pertaining to the work described in this notice should be directed to Kathleen M. Ryan, who can be contacted by calling (716) 879-4392, or by e-mail at: [kathleen.m.ryan@usace.army.mil](mailto:kathleen.m.ryan@usace.army.mil)

The applicant has certified that the proposed activity complies with Ohio's approved Coastal Zone Management Program and will be conducted in a manner consistent with that program. Any comments on the consistency of the proposed activity with Ohio's Coastal Zone Management Program should be forwarded to:

Mr. Don Povolny  
Ohio Department of Natural Resources  
Division of Real Estate and Land Management  
Resource Management Section  
1952 Belcher Drive, Building C-4  
Columbus, Ohio 43224-1386  
Telephone (614) 265-6411  
FAX (614) 267-4764  
e-mail: don.povolny@dnr.state.oh.us

The following authorization(s) may be required for this project:

Water Quality Certification (or waiver thereof) from the Ohio Environmental Protection Agency.

There are no registered historic properties or properties listed as being eligible for inclusion in the National Register of Historic Places that will be affected by this project.

In addition, available evidence indicates that the proposed work will not affect a species proposed or designated by the U.S. Department of the Interior as threatened or endangered, nor will it affect the critical habitat of any such species.

This notice is promulgated in accordance with Title 33, Code of Federal Regulations, parts 320-330. Any interested party desiring to comment on the work described herein may do so by submitting their comments, in writing, so that they are received no later than 4:30 pm on the expiration date of this notice.

Comments should be sent to the U. S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207-3199, and should be marked to the attention of Kathleen M. Ryan, or by e-mail at: kathleen.m.ryan@usace.army.mil. A lack of response will be interpreted as meaning that there is no objection to the work as proposed.

Comments submitted in response to this notice will be fully considered during the public interest review for this permit application. All written comments will be made a part of the administrative record. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.

Any individual may request a public hearing by submitting their written request, stating the specific reasons for holding a hearing, in the same manner and time period as other comments.

Public hearings for the purposes of the Corps permit program will be held when the District Commander determines he can obtain additional information, not available in written comments, that will aid him in the decision making process for this application. A Corps hearing is not a source of information for the general public, nor a forum for the resolution of issues or conflicting points of view (witnesses are not sworn and cross examination is prohibited). Hearings will not be held to obtain information on issues unrelated to the work requiring a permit, such as property ownership, neighbor disputes, or the behavior or actions of the public or applicant on upland property not regulated by the Department of the Army. Information obtained from a public hearing is given no greater weight than that obtained from written comments. Therefore, you should not fail to make timely written comments because a hearing might be held.

The decision to approve or deny this permit request will be based on an evaluation of the probable impact, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, state and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

*for* *Kathleen M. Ryan*  
Paul G. Leuchner  
Chief, Regulatory Branch

DEPARTMENT OF THE ARMY PERMIT

Permittee: Glen R. DeWillie  
Lieutenant Colonel, Corps of Engineers  
District Commander  
On Behalf of the General Public

Permit No.: 2001-00136

Processing No.:

Effective Date:

Expiration Date:

Affirmation Date:

Issuing Office: U.S. Army Engineer District, Buffalo  
1776 Niagara Street  
Buffalo, New York 14207-3199

**IMPORTANT:** PRIOR TO COMMENCING THE ACTIVITY AUTHORIZED BY THIS PERMIT OR DIRECTING A CONTRACTOR TO PERFORM SUCH ACTIVITY ON YOUR BEHALF, BE SURE THAT ALL PARTIES READ, UNDERSTAND AND COMPLY WITH THE TERMS AND CONDITIONS OF THIS PERMIT.

NONCOMPLIANCE WITH ANY OF THE TERMS OR CONDITIONS MAY RESULT IN AN ORDER TO REMOVE THE ACTIVITY; CIVIL AND/OR CRIMINAL PENALTIES OR BOTH.

**AUTHORITIES:** You have been authorized to undertake the activity described below pursuant to:

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)

and

Section 404 of the Clean Water Act (33 U.S.C. 1344)

**AUTHORIZED ACTIVITY:** Minor work in ditches that have been dug through hydric soils in association with the construction of currently existing linear transportation projects. Authority to regulate these discharges has been delegated to the Corps of Engineers under Section 10 of the Rivers and Harbors Act (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344). Linear transportation projects for purposes of this regional permit include public roadways and bike lanes, airport runways, and railroad lines. The issuance of this permit will have no more than minor adverse environmental impacts.

**Types of Waters:** This permit will apply to those ditches that run alongside linear transportation projects that were constructed in hydric soils and have developed or retained wetland characteristics. This permit will also apply to streams that were captured as roadside ditches, are historically modified, lack sinuosity, and exhibit limited recovery, or potential for recovery, of significant aquatic habitat features. These scenarios are considered waters of the United States in the State of Ohio and are regulated under Section 404 of the Clean

Water Act and in some cases, under Section 10 of the Rivers and Harbors Act. This situation is common in the Lake Erie lakeplain area of Northern Ohio and the historic Black Swamp Area of Northwestern Ohio. Transportation ditches that were constructed in upland soils are not waters of the U.S. and do not require a Department of the Army permit to fill, maintain, or relocate.

**Geographic Location:** This permit is limited to work that will occur on existing linear transportation projects located in the Counties of Ohio that make up the jurisdictional area of the Buffalo District Corps of Engineers.

**Restrictions:** The permit does not apply to relocating transportation ditches that will require new cuts into State of Ohio designated Category III wetlands, bogs or fens. The permit does not apply to construction of projects on new alignments. The permit does not apply to projects that will capture streams that were not previously part of the ditch system. The permit does not apply to transportation related activities that are authorized under other current Regional or Nationwide Permits. However, it may be used along with another existing Regional or Nationwide Permit to authorize a single and complete project provided the other Regional or Nationwide Permit does not specifically state that it cannot be combined with other authorizations. The use of this permit must not result in a net loss of waters of the United States. This permit does not authorize the construction of temporary access roads, cofferdams, dewatering or activities authorized by other existing Nationwide or Regional permits.

**Specific Activities:** This permit authorizes filling and cutting (i.e. moving) jurisdictional transportation ditches; cleaning and drainage maintenance activities; and fills in the ditch associated with repairing and stabilizing an eroding roadbed.

**Effective Period:** This permit will remain in effect for five years from the date of issuance. The permit may be extended for an additional five years after a Public Notice is published notifying the intent to extend the permit. The permit may be modified, or revoked prior to the five years, with 30-day notice, if the District Engineer deems such action to be within the public interest.

#### **GENERAL PERMIT CONDITIONS:**

1. That work authorized under this regional permit must begin within one year of the date of the affirmation date and must be completed prior to the expiration date noted on the first page of this authorization. In the event that the affirmation date is less than twelve months prior to the expiration date, the regional permit will remain valid for a period of twelve months from the affirmation date. In no case shall authorization exceed beyond twelve months beyond the expiration date. If you find that you need more time to begin and/or complete the authorized activity, submit your written request for a time extension to this office at least three months before the respective dates.
2. That no activity shall destroy a threatened or endangered species, as identified under the Endangered Species Act of 1973 and amendments, or endanger the critical habitat of such species. If the project occurs within the foraging range of the Indiana bat (*Myotis sodalis*), trees with cavities or exfoliating bark shall not be cut between April 15 and September 15 without first conducting a mist net survey (or other acceptable survey) for the Indiana bat. If the project occurs within the designated Critical Resource Water (special habitat

waters of Lake Erie; see June 7, 2000 Public Notice), no on-shore work shall be performed between November 1 and June 15 to preclude adverse impacts to hibernating Lake Erie water snakes (*Nerodia sipedon insularum*). Additional information and/or case specific waivers may be obtained from Mr. Buddy Fazio of the U.S. Fish and Wildlife Service at 614-469-6923.

3. That no activity shall affect historic properties listed, or eligible for listing, in the National Register of Historic Places.
4. That no work shall occur in a designated component of the State of Ohio Scenic Rivers unless a clearance letter is obtained from the Ohio Department of Natural Resources and submitted to the Corps of Engineers with the Pre-construction Notification.
5. That the Water Quality Certification issued for this project by the State of Ohio is part of this Department of the Army permit pursuant to Section 401(d) of the Clean Water Act. Noncompliance with any limitations or requirements stated in the certification may be a basis for suspension, revocation or modification of this permit.
6. That if the project is located within the Ohio Coastal Zone, you must obtain a certification from the State of Ohio that your project is consistent with their Coastal Zone Management Plan (CZMP) prior to using this Regional Permit. To obtain this certification you must contact the Ohio Department of Natural Resources, Office of Real Estate and Land Management, Fountain Square, Building C-4, Columbus, Ohio 43224-1386, or by telephone at 614-265-6411.
7. That the permittee is responsible for ensuring that the contractor and/or workers executing the activities authorized by this permit have knowledge of the terms and conditions of the authorization and that a copy of the permit document is at the project site throughout the period the work is underway.
8. That efforts shall be made to keep construction debris from entering the waterway or wetland, and shall be removed immediately should any such debris be present in the waterway or wetland. The disposal of trees, brush and other debris in any stream corridor, wetland or surface water is prohibited.
9. That any discharge of dredged or fill material shall consist of suitable material free from toxic pollutants in toxic amounts. The fill shall be free of fines, oil and grease, debris, wood, general refuse, plaster and other pollutants and shall contain no broken asphalt.
10. That all erosion and sediment control practices shall be in place prior to any grading or filling operations. They shall remain in place until construction is completed and the area stabilized. Silt curtains or a similar type turbidity control device shall be placed upstream and downstream of the construction area and between the work and wetlands that extend off the right of way.
11. That as soon as possible following construction, all exposed banks and slopes shall be seeded and mulched to prevent erosion. To the extent practicable, seed mixes shall be composed of plant species historically native to the project area.
12. That equipment used to perform the work authorized by this permit will be operated from an upland location, preferably from the existing roadbed, whenever it is possible to do so. The equipment shall be operated in a manner that will reduce and minimize turbidity in any waterway.

13. That the project must comply with FEMA or FEMA-approved local floodplain requirements for any permanent above-grade fills placed within waters of the U.S. located within a designated 100-year floodplain.
14. That prior to using this permit, the attached Pre-Construction Notification Summary Sheet shall be sent to the Corps of Engineers – Buffalo District, Regulatory Branch, 1776 Niagara Street, Buffalo, NY 14207-3199. The notification shall also include a wetland delineation and the most recent version of the Ohio Rapid Assessment Method (ORAM) if the project includes fills and cuts in wetlands that extend off the right-of-way.

**LIMITS OF THIS AUTHORIZATION:**

1. The granting of this permit does not obviate the need to obtain other Federal, State, or local authorizations as required by law.
2. Issuance of this permit does not grant you any property rights or exclusive privileges, nor does it authorize any injury to the property or rights of others.
3. This permit does not authorize interference with any existing or proposed Federal project, nor does it convey any authority to interfere with the right of the public to free navigation on all navigable waters of the United States.

**LIMITS OF FEDERAL LIABILITY:** In issuing this permit, the Federal Government does not assume any liability for the following:

1. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
2. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
3. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
4. Design or construction deficiencies associated with the permitted work.
5. Damages associated with any future modification, suspension, or revocation of this permit.

**RELIANCE ON APPLICANT'S DATA:** The determination of this office that your project is authorized by this permit and is not contrary to the public interest was made in reliance on the information you provided.

**RE-EVALUATION OF THE DECISION TO GRANT A REGIONAL PERMIT:** This office may re-evaluate its decision on this permit at any time circumstances warrant. Circumstances that could require a re-evaluation include, but are not limited to, the following:

1. You fail to comply with the terms and conditions of this permit.
2. The information provided by you in support of your application proves to have been false, incomplete, or inaccurate.

3. Significant information surfaces which this office did not consider in reaching the original public interest decision.

Such a re-evaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in Title 33 of the Code of Federal Regulations Part 325.7 or enforcement procedures such as those contained in Title 33 of the Code of Federal Regulations Parts 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may, in certain situations (such as those specified in Title 33 of the Code of Federal Regulations Part 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

EXTENSIONS: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a re-evaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit. Extension requests must be submitted in accordance with the directions given in General Condition 1.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

---

District Commander

---

Date

When the property associated with the work authorized by this permit is sold or transferred, the terms and conditions of this permit will continue to be binding to the new owner(s) of the property. To validate the transfer of this permit and the liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

---

Transferee

---

Date

REGIONAL PERMIT NO. 2001-00136  
LINEAR TRANSPORTATION DITCH MAINTENANCE AND RELOCATION PROJECTS  
PRE-CONSTRUCTION NOTIFICATION SUMMARY SHEET

Applicant's Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Point of Contact: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ FAX: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Project Name: \_\_\_\_\_  
Project PID: Target Construction Date: \_\_\_\_\_

Start Latitude: \_\_\_\_\_ End Latitude: \_\_\_\_\_  
Start Longitude: \_\_\_\_\_ End Longitude: \_\_\_\_\_

Roadway Name (and/or mileposts): \_\_\_\_\_  
Nearest Cross Street (s): \_\_\_\_\_

City: \_\_\_\_\_ Township: \_\_\_\_\_  
County: \_\_\_\_\_ State: Ohio

Total Length of filled ditch: \_\_\_\_\_ Average Width of filled ditch: \_\_\_\_\_  
Length of filled Captured Stream: \_\_\_\_\_  
Length of filled ditch that was cut through a wetland that extends off the ROW: \_\_\_\_\_  
Width of filled ditch that was cut through a wetland that extends off the ROW: \_\_\_\_\_

Total Length of new ditch: \_\_\_\_\_ Average Width of new ditch: \_\_\_\_\_  
Length of moved Captured Stream: \_\_\_\_\_  
Length of new ditch to be dug in a wetland that extends off the ROW: \_\_\_\_\_  
Width of new ditch to be dug in a wetland that extends off the ROW: \_\_\_\_\_

State designated Category of the wetland: \_\_\_\_\_

Wetlands extending beyond the ditch (i.e. the ditch was cut through a larger wetland) require a wetland delineation and a Ohio Rapid Assessment Method (ORAM).